

1 HON. BARBARA J. ROTHSTEIN
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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

8 WILLIAM T. WHITMAN, individually and on
behalf of all others similarly situated,

9 Plaintiff,

10 NO. 3:19-cv-06025-BRJ

11 v.
12 STATE FARM LIFE INSURANCE
COMPANY,

13
14 **DECLARATION OF STEPHEN R.**
BASSER IN SUPPORT OF
PLAINTIFF'S MOTION FOR
CLASS CERTIFICATION

Defendant.

15 I, Stephen R. Basser, hereby declare under penalty of perjury pursuant to 28 U.S.C.
16 § 1746 that the following is true and correct:

17 1. I am a partner in the law firm of Barrack Rodos & Bacine. I am one of the
18 attorneys representing Plaintiff in the above-captioned action. Each of the facts set forth below
19 are true and correct within my personal knowledge and if called and sworn as a witness, I
would competently testify thereto.

20 2. Barrack Rodos & Bacine has significant depth, experience, and resources in
21 litigating complex class action cases, including consumer class actions. Barrack, Rodos &
22 Bacine "BRB" has been extensively involved for more than 40 years in complex class action
23 litigation, participating in hundreds of such cases and recovering over 10 billion dollars for

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25 DECLARATION OF STEPHEN R. BASSER IN SUPPORT
26 OF PLAINTIFF'S MOTION FOR CLASS CERTIFICATION
(3:19-cv-06025-BRJ) - 1

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1 class members, including several such actions that have secured recoveries in excess of 1
 2 billion dollars. BRB has had leadership roles in securities, antitrust and consumer class actions,
 3 having been appointed by courts throughout the United States. BR&B has been involved as a
 4 lead counsel, co-lead counsel or executive committee member in actions against corporations
 5 alleging misrepresentation, including fraudulent misrepresentations and concealment, harming
 6 investors and/or consumers, and/or business entities, including a number of cases in which
 7 BRB has represented public pension funds protecting the rights of retirees. Some of the many
 8 complex class action cases in which the firm has participated, and including mostly cases in
 9 which Barrack, Rodos & Bacine was a lead, co-lead or executive committee member, include
 10 those cases identified below.

11 3. BRB has achieved significant recoveries on behalf of class members in
 12 consumer cases, including, among others, the following:

13 ➤ "Senior Annuity" cases litigated from 2005 through the last case ending in 2015 in
 14 which BRB served as a co-lead counsel, or participated as a defacto executive committee
 15 member, in the prosecution as part of a defined group of law firms, which achieved settlements
 16 valued in the aggregate between \$552 million and \$1.273 billion, after asserting claims against
 17 various insurance companies under consumer protection and elder abuse statutes, and the
 18 Racketeer Influenced and Corrupt Organizations Act, including the following:

19 • *Negrete. et al. v. Allianz Life Insurance Company of North America*, Case
 20 No. 05-cv-06838-CAS-MAN (C.D. Cal.), resulted in a claims-made settlement valued between
 21 \$251 million and \$971 million;

1 • *In re American Equity Annuity Practices and Sales Litigation*, Case No.
 2 2:05-cv-06735-CAS-MAN (C.D. Cal.), resulted in a settlement valued at approximately \$129
 3 million;

4 • *Rand v. American National Insurance Co.*, Case No. 3:09-cv-0639-WDB
 5 (N.D. Cal.), resulted in a settlement valued at more than \$9 million;

6 • *Negrete, et al. v. Fidelity and Guaranty Life Insurance Company*, Case No.
 7 2:05-cv-06837-CAS-MAN (C.D. Cal), resulted in a settlement valued at approximately \$52.7
 8 million;

9 • *Meadows v. Jackson National Life Insurance Co.*, Case No. 4:12-cv-1380-
 10 CW (N.D. Cal), resulted in a settlement valued at more than \$11.2 million;

11 • *Midland National Life Insurance Co Annuity Sales Practices Litigation*,
 12 Case No. 2:07-ml-01825-CAS-MAN (C.D. Cal.), resulted in a settlement valued at \$79.5
 13 million; and

14 • *In re National Western Life Insurance Deferred Annuities Litigation*, Case
 15 No. 05-cv-1018-AJB (WVG), resulted in a settlement in 2014 valued at more than \$21 million.

16 ➤ *Rieff v. Evans* (Allied Mutual Insurance Company Demutualization Litigation),
 17 Civil Action No. CE 35780 (Polk Cty., Iowa, District Ct.). BR&B, as co-lead counsel for a
 18 class of individual mutual insurance company policyholders (as owners of the mutual, similar
 19 to shareholder-owners of a stock company), brought an action against management for, inter
 20 alia, conversion of the value of their ownership interests in the mutual under a theory of de
 21 facto demutualization. The Iowa Supreme Court upheld the plaintiffs' theory in *Rieff v. Evans*,
 22 630 N.W.2d 278 (Iowa 2001), and the case was subsequently resolved for approximately \$130
 23 million.

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1 ➤ *Hernandez, et al. v. Google, Inc., et al.*, Case No. 1-15-CV-280601 (Santa Clara
 2 Cty., California, Superior Ct.), before the Honorable Brian C. Walsh. BRB, on behalf of the
 3 plaintiffs and similarly situated purchasers of gift cards issued by Google, Inc. for use in its
 4 Google Play Store, prosecuted this action to require defendants to abide by California law with
 5 regard to gift cards with less than a \$10.00 balance on them. Google agreed to comply with
 6 California law, and after the filing revised its payment system. The changes adopted by Google
 7 pursuant to the settlement are ongoing, providing benefit to millions of Google Play gift card
 8 users.

9 ➤ *Gutierrez v. Charles J. Givens Organization, et al.*, Case No. 667169 (San Diego
 10 Cty., California, Superior Court). BRB, on behalf of the plaintiff and similarly situated class
 11 members, achieved a jury verdict in excess of \$14 million for the benefit if the plaintiff
 12 consumer class.

13 ➤ BRB served as an interim executive committee member in a consumer class action
 14 entitled *Feller, et al. v. Transamerica Life Insurance Company*, Case No. 16-cv-01378 CAS
 15 (AJWx), in the Central District of California which ultimately achieved a \$200 million
 16 settlement in 2018.

17 ➤ BRB is currently serving in a co-leadership position in a consumer class action,
 18 against *In re: Lincoln National COI Litigation*, Case No. 16-cv-06605-GJP, in the Eastern
 19 District of Pennsylvania (Chair of Plaintiffs' Steering Committee).

20 ➤ In 2017, the Attorney General of the State of New Mexico appointed Stephen R.
 21 Basser, Jeffrey A. Barrack, and Samuel M. Ward, Barrack, Rodos & Bacine partners, as
 22 Special Assistant Attorneys General for the purpose of prosecuting an action on behalf of New
 23 Mexico consumers against Vivint Solar, Inc., and other defendants, for violations of New
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1 Mexico consumer law. Barrack, Rodos & Bacine prosecuted the action entitled, *State of New*
 2 *Mexico, ex. Rel., Hector H. Balderas, Attorney General of New Mexico v. Vivint Solar*
 3 *Developer, LLC*, Case No. D-202-CV-2018-01936, in conjunction with the Office of the
 4 Attorney General, on behalf of New Mexico consumers.

5 4. The Firm has achieved significant recoveries on behalf of consumers and
 6 business class members in antitrust cases, including, among others, the following:

7 • *In re Urethane Antitrust Litigation*, 2:04-md-01616-JWL (D. Kan.). After
 8 nearly nine years of litigation and four weeks of trial, the Jury reached a verdict for plaintiffs in
 9 excess of \$400 million (before trebling) against defendant Dow Chemical Company, and the
 10 District Court entered a Judgment of \$1.06 billion, which was upheld on appeal by the Tenth
 11 Circuit Court of Appeals. While on appeal to the U.S. Supreme Court, the case against Dow
 12 settled for \$835 million, which was in addition to earlier settlements reached with other
 13 defendants. BRB served as a member of the trial team for the case;

14 • *In re Vitamins Antitrust Litigation*, MDL No. 1285 (D.D.C.), highly complex
 15 litigation, which plaintiffs achieved settlements in excess of \$1 billion. BRB served as a
 16 member of the executive committee.

17 • *In re Citric Acid Antitrust Litigation*, Master File No. 95-2963 (N.D. Cal.).
 18 After five years of litigation, plaintiffs achieved settlements totaling over \$80 million. BRB
 19 served as co-lead counsel.

20 • *In re Graphite Electrodes Antitrust Litigation*, Master File No. 97-CV-4182
 21 (CRW) (E.D. Pa.). After six years of litigation, plaintiffs achieved settlements totaling over
 22 \$133 million. BRB served as co-lead counsel.

1 • *In re Automotive Refinishing Paint Antitrust Litigation*, MDL No. 1426

2 (E.D. Pa.). After five years of litigation, plaintiffs achieved settlements totaling over \$105
3 million. See 617 F. Supp.2d 336 (E.D. Pa. 2007). BRB served as co-lead counsel.

4 • *In re Sorbates Antitrust Litigation*, No. C 98-4886 (N.D. Cal.). After four

5 years of litigation, plaintiffs achieved settlements in the total amount of \$96.5 million. BRB
6 served as co-lead counsel.

7 • *Thomas & Thomas Rodmakers, Inc., et al. v. Newport Adhesives and*

8 *Composites, et al.*, No. CV-99-07796 FMC (RNBx) (C.D. Cal.) (Carbon Fiber Antitrust

9 Litigation). Plaintiffs achieved settlements totaling \$67.5 million. BRB served as co-lead
10 counsel.

11 • *In re Polypropylene Carpet Antitrust Litigation*, MDL No. 1075 (N.D. Ga.).

12 After five years of litigation, plaintiffs achieved a recovery of nearly \$50 million. See 93 F.
13 Supp. 2d 1348 (N.D. Ga. 2000). BRB served as co-lead counsel.

14 • *In re Flat Glass Antitrust Litigation*, MDL No. 1200 (E.D. Pa.). After more

15 than seven years of litigation, plaintiffs were successful in maintaining the case on appeal, see
16 385 F.3d 350 (3d Cir. 2004), and achieved total recoveries of more than \$120 million. BR&B
17 served as co-lead counsel.

18 5. BRB has achieved significant recoveries as a lead or co-lead counsel on behalf
19 of class member investors, including institutional clients, in numerous cases arising under the
20 Private Securities Litigation Reform Act of 1995, ("PSLRA"). The following lists some of the
21 more notable recoveries:

22 • *In re WorldCom, Inc. Securities Litigation*, Master File No. 02 Civ. 3288

23 (DLC) (S.D.N.Y.). BRB, as co-lead counsel for lead plaintiff the Comptroller of the State of
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1 New York, the sole Trustee for the New York State Common Retirement Fund ("NYSCRF"),
 2 negotiated \$6.19 billion in settlements with defendants, including a settlement with the
 3 company's outside auditor, Arthur Andersen LLP, after nearly five weeks of trial. The recovery
 4 is the largest ever achieved in the Southern District of New York and in the Second Circuit.

5 • *In re Cendant Corporation Litigation*, Civil Action No. 98-1664 (WHW)
 6 (D.N.J.). BRB, as co-lead counsel, represented co-lead plaintiffs NYSCRF and the California
 7 Public Employees' Retirement System. This litigation was settled for \$3.18 billion – which, at
 8 the time, was by far the largest recovery ever achieved in a class action under the securities
 9 laws – plus a contingency that brought the total recovery to \$3.32 billion. The \$335 million
 10 settlement with Ernst & Young, the outside auditor for one of the Cendant predecessor
 11 companies, continues to stand as the largest recovery from an accounting firm in a securities
 12 class action. The recovery is the largest ever achieved in the District of New Jersey and in the
 13 Third Circuit.

14 • *In re McKesson HBOC, Inc. Securities Litigation*, Master File No. CV-99-
 15 20743 RMW (N.D. Cal.). BRB, as co-lead counsel, represented the NYSCRF as sole lead
 16 plaintiff. BRB vigorously prosecuted the case against the company, its management, HBOC,
 17 Inc.'s former auditor, Arthur Andersen LLP, and Bear Stearns & Co., Inc., which had issued a
 18 fairness opinion in connection with the merger between McKesson and HBOC. After
 19 contentious motion practice and during discovery, BRB participated with the NYSCRF in
 20 negotiating settlements totaling \$1.052 billion. The recovery is the largest ever achieved in the
 21 Northern District of California and in the Ninth Circuit.

22 • *In re American International Group, Inc. 2008 Securities Litigation*, Case
 23 No. 08-cv-4772-LTS-DCF (S.D.N.Y.). BRB served as a co-lead counsel representing the State
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1 of Michigan Retirement Systems. After more than six years of intensive litigation, including
 2 the completion of all fact discovery and full briefing, an evidentiary hearing, and oral argument
 3 on lead plaintiff's motion for class certification, the parties reached settlements totaling \$970.5
 4 million, which the court approved on March 20, 2015, finding that it was an "outstanding result
 5 obtained on behalf of the settlement class." The recovery is among the largest achieved in a
 6 securities fraud class action stemming from the 2008 financial crisis, and appears to be the
 7 largest securities class action settlement in the absence of a criminal indictment, an SEC
 8 enforcement action or a restatement of a company's financial statements.

9 • *In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation,*

10 Master File No. 07-cv-9633 (LBS)(AJP)(DFE), pending before the Honorable Jed S. Rakoff in
 11 the Southern District of New York. BRB, as co-lead counsel for sole lead plaintiff the State
 12 Teachers Retirement System of Ohio, negotiated a \$475 million settlement with defendants in
 13 January 2009.

14 • *Pennsylvania Public School Employees' Retirement System v. Bank of*

15 *America Corp., et al.*, Civil Action No. 1:11-cv-733-WHP, pending before the Honorable
 16 William H. Pauley, III, in the Southern District of New York. After nearly six years of
 17 litigation, BRB, as the sole lead counsel for sole lead plaintiff the Pennsylvania Public School
 18 Employees' Retirement System, negotiated a \$335 million settlement with defendants that the
 19 court approved in December 2016.

20 • *In re DaimlerChrysler AG Securities Litigation*, Master File No. 00-993

21 (JJF) (D. Del.). BRB, as co-lead counsel for institutional investors the Denver Employees
 22 Retirement Plan, the Policemen's Annuity and Benefit Fund of Chicago, and the Municipal
 23 Employees Annuity and Benefit Fund of Chicago, negotiated in October 2003, a \$300 million

1 settlement of this case involving the purported "merger of equals" between Daimler Benz and
 2 Chrysler Corporation. Notably, in a related opt out case, the court granted summary judgment
 3 in defendants' favor, leaving the opt out plaintiff with no recovery.

4 • *In re The Mills Corporation Securities Litigation*, Civil Action No. 1:06-cv-
 5 00077 (LO/TRJ) (E.D. Va.). BRB, as co-lead counsel and counsel for co-lead plaintiff the
 6 Iowa Public Employees Retirement System ("IPERS"), negotiated settlements totaling \$202.75
 7 million with the defendant real estate investment trust corporation, with Mills' former auditor,
 8 Ernst & Young, and with a foreign real estate development company. When it was approved in
 9 December 2009, the global settlement of the case was the largest securities fraud class action
 10 recovery in the Eastern District of Virginia.

11 • *In re Schering-Plough Securities Litigation*, Master File No. 01-CV-0829
 12 (KSH/RJH), before the Honorable Katherine Hayden in the District of New Jersey. BRB, as
 13 lead counsel for sole lead plaintiff the Florida State Board of Administration, negotiated a \$165
 14 million settlement after 8 years of hard-fought litigation. The settlement, approved in
 15 December 2009, was described by the Court as the product of "hard work and good judgment
 16 in ultimately achieving a negotiated resolution of substantial value to the class."

17 • *In re Apollo Group, Inc. Securities Litigation*, Master File No. CV 04-2147-
 18 PHX-JAT, before the Honorable James A. Teilborg in the District of Arizona. BRB, as lead
 19 counsel for sole lead plaintiff the Policemen's Annuity and Benefit Fund of Chicago ("PABF"),
 20 conducted a two-month trial which resulted in a unanimous jury verdict in January 2008 for the
 21 lead plaintiff and investor class for the full amount of price inflation per share that the lead
 22 plaintiff had requested. On March 7, 2011, the U.S. Supreme Court denied defendants' petition
 23 for *certiorari*, thereby allowing the Ninth Circuit's decision to stand and for the district court to
 24

1 enter judgment in favor of the plaintiff class. The case was resolved by the payment by
 2 defendants of \$145 million for the benefit of the injured investors, and on April 20, 2012, the
 3 court granted final approval of the case resolution.

4 6. I, Stephen R. Basser, have personally litigated complex class actions and
 5 complex mass tort actions during my over 44-year professional career. My experience in such
 6 cases covers the gamut from investigation, complaint preparation, motion practice, oral
 7 argument, and trial, including trial by jury. The following cases are a representative sample of
 8 complex class action cases in which I have played a lead, co-lead or executive committee role:

9 • All of the "Senior Annuity" cases noted above, which collectively achieved
 10 recoveries valued between \$552 million and \$1.273 million.

11 • I was the lead counsel and lead trial attorney for BRB in the "*Apollo*" class
 12 action, cited above, which was litigated in the United States District Court for the District of
 13 Arizona, before the Honorable James A. Teilborg, until final approval of its settlement in 2012
 14 in the amount of \$145 million after a jury verdict in 2008 and successful appeals. The trial of
 15 that action coursed from November through mid-January 2008, and involved numerous fact
 16 and expert depositions, as well as the presentation and cross-examination of numerous fact and
 17 expert witness in the jury trial. The *Apollo* case involved extensive issues with regard to
 18 Federal Securities Law, presentations of evidence bearing on the issue of false and misleading
 19 representations of statements, and difficult issues of damages and causation.

20 • I was co-lead counsel in *In re McKesson HBOC, Inc. Securities Litigation*,
 21 cited above, which ultimately settled for a total of \$1.052 billion. My participation in the
 22 prosecution of *McKesson* commenced from the very outset of complaint preparation and
 23 investigation, and extended through discovery, motion practice, oral argument, trial

1 preparation, and appellate briefing and assistance with oral argument before the Ninth Circuit
 2 Court of Appeals. *McKesson* is one of the largest class action recoveries in the history of the
 3 Northern District of California.

4 • *In re Chiron Shareholder Deal Litigation*, Case No. RG 05-230567, before
 5 the Honorable Robert B. Freedman in the California Superior Court for Alameda County. I
 6 represented, as lead counsel, an individual investor and the class in this class action litigation
 7 contesting the proposed acquisition of Chiron Corp. by Novartis AG in 2005. After extensive
 8 discovery and injunction practice, Novartis agreed to increase the offering price from its initial
 9 offer of \$40 per share to the final price of \$48, a benefit to the class of approximately \$880
 10 million.

11 • *In re Applied Micro Circuits Corp. Securities Litigation*, Civil Action No.
 12 01-cv-0649-K (AJB) (S.D.Cal.). BRB and I, as sole lead counsel for lead plaintiff, the Florida
 13 State Board of Administration, negotiated a \$60 million settlement in 2005 after vigorous
 14 litigation.

15 • *In re 3Com Securities Litigation*, Master File No. C 97-21083-EAI (N.D.
 16 Cal.). This case, in which BRB and I served as co-lead counsel representing a lead plaintiff
 17 group of individual investors, involved discovery taken throughout the United States and in
 18 Europe with respect to 3Com and its outside auditing firm. A settlement in the amount of \$259
 19 million was reached at the end of the discovery process.

20 • *In re Roadrunner Transportation Systems, Inc. Securities Litigation*, Case
 21 No. 17-cv-144-PP, before the Honorable Pamela Pepper in the Eastern District of Wisconsin
 22 (Lead Counsel). Settlement was achieved in the sum of \$20 million;

1 • *In re Omnivision Technologies, Inc. Securities Litigation*, Case No. 5:11-cv-
 2 05235, before the Honorable Ronald M. Whyte in the Northern District of California (Lead
 3 Counsel) (\$12.5 million settlement);

4 • *In re Bridgestone Securities Litigation*, Master File No. 3:01-0017, before
 5 the Honorable Robert L. Echols in the Middle District of Tennessee (Co-Lead Counsel).

6 Settlement achieved in the amount of \$30 million;

7 • *In re WageWorks, Inc. Securities Litigation*, Case No. 4:18-cv-01523-JSW,
 8 currently before the Honorable Jeffrey S. White in the Northern District of California (Lead
 9 Counsel).

10 • I served as a co-lead counsel in the *Carbon Fiber Antitrust Litigation* matter,
 11 cited above, arising under the federal antitrust laws, which settled for a total of \$67.5 million
 12 after extensive discovery, including depositions in Hong Kong.

13 • I have served as a Special Assistant Attorney General appointed by the
 14 Attorney General of the State of New Mexico in 2017 to prosecute the "*Vivint*" action, cited
 15 above, asserting violations of New Mexico's consumer and RICO statutes.

16 7. I also participated in the prosecution as a non-lead attorney in other significant
 17 consumer cases, including, for example:

18 • *In re: Anthem, Inc. Data Breach Litigation*, 5:15-md-02617-LHK (N.D.
 19 Cal.), which resulted in a \$115 million settlement to end claims against Anthem, one of the
 20 largest for-profit managed health care companies in the nation, for putting over 78 million
 21 customers' personal information at risk through a 2015 data breach. This is the largest data
 22 breach settlement in U.S. history. I was instrumental in aiding lead counsel in identifying,
 23 working with and retaining expert witnesses.

24
 DECLARATION OF STEPHEN R. BASSER IN SUPPORT
 OF PLAINTIFF'S MOTION FOR CLASS CERTIFICATION
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1 • I served as an interim executive committee counsel in the *Transamerica*
 2 case, cited above, a consumer action under the consumer statutes of the State of California,
 3 which arose as a consequence of the insurer's escalation of cost of insurance monthly rates.
 4 *Transamerica* settled in 2018 for \$200 million.

5 8. Beyond my significant depth and experience litigating complex classes,
 6 including complex class action cases, Barrack, Rodos & Bacine has significant resources to
 7 devote to the litigation both in terms of attorneys, paralegals, and staff and financial depth and
 8 contribution. The firm has 16 fulltime attorneys, 3 fulltime paralegals and a host of support
 9 staff enabling it to timely, efficiently and with great skill and professionalism, devote any
 10 resources that are necessary to the appropriate prosecution of this lawsuit. BRB has been
 11 involved in many high-stakes cases in which it has been required to expand well over \$1
 12 million dollars, out of pocket, and absorb expenses and costs in litigations, over many years.
 13 Barrack, Rodos & Bacine is financially equipped to be a significant financial partner in the
 14 prosecution of this litigation combating any host of corporate defendants and defense firms.

15 9. I graduated from the American University, Washington D.C. (B.A., with
 16 Honors, 1973) and Temple University School of Law, Philadelphia, Pennsylvania (J.D. *cum*
 17 *laude*, 1976), where I was awarded the Honor of "Highest Grade and Distinguished Class
 18 Performance" by its nationally renowned clinical trial litigation program and was selected to
 19 serve as a student prosecutor under the supervision of the United States Attorney's Office for
 20 the Eastern District of Pennsylvania during my senior year. I am a member of the bars of the
 21 Supreme Court of Pennsylvania (1976), and the Supreme Court of California (1985). I have
 22 been admitted *pro hac vice* in this case, and have been similarly admitted by numerous other
 23 United States District Courts in jurisdictions throughout the nation in other cases.

10. My firm and I have demonstrated the ability to work collegially and efficient with other law firms and in high profile cases such as the instant matter. My firm and I have also demonstrated the ability to amicably resolve, in the best interests of class members, significant class action mega-cases through settlement, and, at times, through trial, including some of the largest settlements in the history of American class action jurisprudence. The Firm has received numerous accolades from jurists, including, as one example among others, Judge Teilborg upon the conclusion of trial in the *Apollo* case, as noted in the law firm's resume, Exhibit 1 hereto at pages 25-26. Barrack Rodos & Bacine is committed to working with all of the other plaintiff's counsel in this litigation.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 16TH day of February, 2021, in San Diego, California.

/s/Stephen R. Basser
STEPHEN R. BASSER

4834-0650-7740, v. 1

DECLARATION OF STEPHEN R. BASSER IN SUPPORT
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